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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,718	02/15/2002	Daniel Bone	0275S-0327DV	5231
27572	7590	05/21/2004	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C.			DEXTER, CLARK F	
P.O. BOX 828			ART UNIT	
BLOOMFIELD HILLS, MI 48303			PAPER NUMBER	

3724

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/077,718	Applicant(s) BONE ET AL.	
	Examiner Clark F. Dexter	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-28 is/are pending in the application.
- 4a) Of the above claim(s) 25-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/015,615.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed on March 8, 2004 has been entered.

Terminal Disclaimer

2. The terminal disclaimer filed on March 8, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6,449,851 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 112

3. Claims 22-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 22, line 7, the recitation "adapted for engagement with said object" is vague and indefinite as to how the clamping arm and housing are "adapted" to perform the recited function, that is, it is not clear as to what structure is being implied by the subject recitation.

Claim Rejections - 35 USC § 102/103

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 22 and 23 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Stoll, pn 2,175,488.

Stoll discloses a mechanism (e.g., in Figs. 1-3) with every structural limitation of the claimed invention including a housing (e.g., 10); a rod (e.g., 22) attached to the housing; a clamping arm (e.g., 13) rotatably mounted on the rod; a non-releasable one way rotary clutch (e.g., 19, 19); and a support member (e.g., 11).

In the alternative, if it is argued that Stoll does not disclose a housing, the Examiner takes Official notice that housings on such mechanisms are old and well known in the art for various known reasons including enclosing the lowermost portion of the disclosed invention for various known benefits including an improved/alternate appearance. Therefore, it would have been obvious to one having ordinary skill in the art to provide a housing on the mechanism disclosed by Stoll for the well known benefits including those described above.

7. Claims 22 and 23 are rejected under 35 U.S.C. 102(b) as anticipated by Kling, pn 464,100 or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kling, pn 464,100 in view of Nicholson, pn 2,548,443.

Kling discloses a mechanism with every structural limitation of the claimed invention including a housing (e.g., the housing of the brake which is not shown); a rod (e.g., B) attached to the housing; a clamping arm (e.g., A) rotatably mounted on the rod; and a non-releasable one way rotary clutch (e.g., E, F, b' shown in Figs. 2 and 3).

In the alternative, if it is argued that Kling does not explicitly disclose a housing, the Examiner takes Official notice that such housings, particularly those used in conjunction with the disclosed invention, are old and well known in the art and provide various known benefits including protecting the associated brake/components from outside elements. As one example, Nicholson discloses a device that uses such a brake, wherein the device includes a housing and a support member attached to the housing. Therefore, it would have been obvious to one having ordinary skill in the art to

provide a housing on the mechanism of Kling for the well known benefits/reasons including those described above.

Allowable Subject Matter

8. Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments filed March 8, 2004 have been fully considered but they are not persuasive.

In the third paragraph on page 4 of the amendment, applicant argues that

“Neither the arms of the foot rest or the handle can be defined as a clamping arm. Thus, Applicant does not believe either reference is a valid 35 U. S. C. 102 reference.”

It is respectfully submitted that applicant's argument is not understood. There is nothing in the claims as best understood that structurally distinguishes the claimed invention over the prior art references. Applicant appears to be arguing that the prior art does not teach or suggest the same intended use. However, it is well settled patent law that an intended use of an apparatus/device cannot serve to patentably distinguish a claimed invention over the prior art.

In the paragraph bridging pages 4 and 5 of the amendment, and in the paragraphs on page 5 of the amendment, the Examiner respectfully disagrees with applicant's analysis. It is respectfully submitted that the applied prior art meets the claimed invention, not the disclosed invention. Thus, the question is whether it would have been obvious to one having ordinary skill in the art to modify the invention in the respective patent. More specifically, the question is whether it would have been obvious to one having ordinary skill in the art to add a housing to Stoll and Kling. It is believed that the prior art rejection gives reasonable rationale and motivation for simply providing a housing to the respective patents (i.e., Stoll and Kling). Therefore, it is respectfully submitted that the claims do not distinguish over the prior art rejections and thus the rejections must be maintained.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (703)308-1404. The examiner can be reached Monday through Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (703)308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Clark F. Dexter
Primary Examiner
Art Unit 3724

cfd
May 19, 2004